89-1122 1

Supreme Court, U.S.
FILED
DEC 13 1989
JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

EDWARD DEAN CHRISTENSEN,

PETITIONER,

V.

BRYCE H. PETTEY, ET AL.

RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI

TO THE

UTAH COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

EDWARD DEAN CHRISTENSEN
In Proper Person
387 North 300 East
Richfield, Utah 84701
Phone: (801) 896 4719

6/32

QUESTION PRESENTED

Under the rights of equal protection of the laws, due process of law, and the right to redress grievances, can State employees lawfully injure a citizen of the State by denying him protection of the laws and due process and then deny him redress of his grievances for said injuries ?

PARTIES

EDWARD DEAN CHRISTENSEN,

Plaintiff,

v.

BRYCE H, PETTEY, MARY BETH WALZ,
MAXWELL A. MILLER, STEVEN W, LEWIS,
TIMOTHY R. HANSON, MERICIA FRYER,
GORDON HALL, CHRISTENE DURHAM,
MICHAEL ZIMMERMAN, RICHARD C, HOWE,
I. DANIEL STEWART, NORMAN H. BANGERTER,
JOHN AND JANE DOES 1 THROUGH 100.

Defendants.

TABLE OF CONTENTS

QUESTIONS PRESENTED	1
PARTIES	1
OPINIONS OF COURTS BELOW	ii
JURISDICTION	2
STATEMENT OF THE CASE	4
ARGUMENT	7
THE LAW EXPLAINED AGAIN	10
IMPORTANCE OF ISSUING WRIT	23
CERTIFICATE OF MAILING	24
APPENDIX	25

TABLE OF AUTHORITIES

CASES	PAGE
Ex parte Wilson, 114 U.S. 417	16
Hurtado v. California, 110 U.S. 516	15
In re Murchison, et al., 349 U.S. 133	13
In re Slaughterhouse Cases, 16 Wall 69	16
Marbury v. Madison, 5 U.S. (1 Cranch) 137	7, 9, 20
Miranda v. Arizona, 384 U.S. 436	16
Olmstead v. U. S., 277 U.S. 438	20
Robertson v. Baldwin, 165 U.S. 275	16
Solesbee v. Balkcom, 339 U.S. 9	10
Warden v. Hayden, 387 U.S. 294	15

Westfall v. Erwin, 56 LW 4087 (1988) 21

CONSTITUTIONAL PROVISIONS

Amendment Thirteen, U. S. Const. 8

Utah Const. Art. 1, Sec. 10 17

Utah Const. Art. I, Sec. 11 18

Utah Const. Art. 1, Sec. 26 19

Utah Const. Art. IV, Sec. 10 19

Utah Const. Art. VII, Sec. 5 18

STATUTES

26 U.S.C., Sec. 6012 14

Utah Code, Sec. 59-31-7(1) 10

Utah Code, Sec. 59- 14A-48 11

Utah Code, Sec. 59-24-4 11

CONSTITUTIONAL LAW

16 Am Jur 2d, Sec. 178 21

16 Am Jur 2d, Sec. 256 22

Rule 17.1 (c) Sup. Ct. Rules 7, 22

Blacks Law Dictionary 8, 17

OPINIONS OF COURTS BELOW

The reports of opinions delivered in the Courts below are in the Appendix of this Petition.

JURISDICTION

This Court has jurisdiction as follows: "The judicial power of the United States, shall be vested in one supreme Court, ..." "The judicial power shall extend to all cases , in law and equity, arising under this Constitution, the laws of the United States, ..." Article III, U. S. Constitution This case arises under the right to petition the Government for a redress of grievances. First Amendment. This Court has original jurisdiction in specified cases and appellate jurisdiction in all other cases as mentioned. This case is an appeal from the highest court of Utah in which a decision can be had, and is a final decision, under 28 U.S.C., Sec. 1257(3), and draws into question the right of a citizen of Utah to have protection of the laws of the United States, and of the State of Utah, the right to not be deprived of his liberty without Due process of law, and the right to redress his grievances under the First Amend-

ment.

The date of the judgment and decree of the Utah Court of Appeals is August 25, 1989 there is no time of entry. The Order denying rehearing is dated Sept. 15, 1989. There is no time extention to petition for Certiorari. The statutory provision believed to confer on this Court jurisdiction to review the judgment in question by writ of certiorari is 28 U.S.C., Sec. 1257 (3). Petitioner's rights, privileges and immunities are set up and claimed under the Constitution and statutes of the United States and have been denied by the Defendants and Utah Courts.

CONSTUTUTIONAL PROVISIONS AND STATUTES

This case involves Amendments 1, 4, 5, 10, 13, and 14 of the U. S. Constitution, U. S. Code, Title 26, Sec. 6012, Constitutional Law 16 Am Jur 2d, Sections 178 and 256, Utah Constitution, Article I, Sections 7, 10 11, 21, and 26, Article IV, Sec. 10 and Article VII, Sec. 5, Utah Code Sections 59-14..-48, 59- 24-4 and 59-31-7. All are set out in the Appendix of this Petition.

STATEMENT OF THE CASE

Christensen is a native born citizen of the State of Utah, entitled to the protection of the laws, both of the State of Utah and of the United States. Defendants are employees of the State of Utah, and have a duty to afford Christensen protection of the laws, both State and Federal. In 1987 Defendants attacked Christensen, by petitioning in Utah District for a writ of mandate to compel him to make and file Utah income tax returns. Such attack was contrary to both Utah and Federal law, as the record shows. Christensen explained the law in Utah District Court, which was rejected by Defendant Hanson. Hanson, acting on his beliefs, issued a false Writ of Mandate against Christensen, and then sent him to jail, for contempt of Court, for failure to obey the false Writ of Mandate.

Christensen filed the instant action, on Sept. 15, 1987, to redress the injuries inflicted upon him by Defendants. Christensen raised his rights to protection of the laws and due process of law by claiming injury for

their denial in the Complaint.

Defendants responded to the Complaint on Oct. 13, 1987, by moving the District Court for dismissal, claiming immunity from suit and failure to state a claim upon which relief can be granted.

Christensen filed objections to Defendant's motion to dismiss on Oct 21, 1987, from jail.

Defendants responded to Christensen's objections on October 27, 1987.

Christensen responded to Defendant's response on Nov. 2, 1987.

Judge Tibbs dismissed Christensen's suit on Nov. 12, 1987, finding that "The Complaint fails to state a claim upon which relief can be granted."

Christensen filed Notice of Appeal to the Supreme Court of Utah on Dec. 1, 1987.

Christensen docketed Appeal in the Supreme Court of Utah on Dec. 15, 1987 and filed a Motion for summary Reversal on Dec. 24, 1987.

Defendants filed Motion for summary Affirmance on Dec. 28, 1987,

Christensen filed objections to Defendants

motion on Jan 6, 1988.

The Supreme Court poured-over said Appeal to the Utah Court of Appeals, for disposition, on Jan. 15, 1988.

The Utah Court of Appeals issued an Order Denying Motions For Summary Disposition on Feb. 22, 1988

Defendants filed a Motion for Summary Affirmance in the Utah Court of Appeals on March 14, 1988

Christensen filed an Amended Motion to Deny Motion for Summary Affirmance on March 23, 1988.

Defendants responded to said Motion on March 31, 1988.

Christensen responded to Defendants responce on April 5, 1988

The Utah Court of Appeals issued its Memorandum Decision on August 25 1989,

Christensen filed a Petition For Rehearing on Sept 2, 1989

The Utah Court of Appeals issued its Order denying Rehearing on Sept. 15, 1989.

Notice of Appeal was filed Oct. 11, 1989.

ARGUMENT

REASONS FOR ALLOWANCE OF THE WRIT

Under Rule 17.1 (c), Rules of this Court, considerations govering review on certiorari include "When a state court ... has decided a federal question in a way in conflict with applicable decisions of this Court." The decisions of the Utah Court of Appeals are in conflict with with several applicable decisions of this Court, as follows:

1. The Utah Court of Appeals affirmance of the Utah District Courts' dismissal of Christensen's suit for redress of injuries is in conflict with this Court's decision in Marbury v. Madison,

> "... for it is a settled and invariable principle in the laws of England, that every right, when withheld, must have a remedy, and every injury its proper redress." Marbury v. Madison, 5 U.S. (1 Cranch) 137, 163.

Christensen's suit is for redress of injuries and to remedy rights withheld. It is irrational to dismiss such a suit on any ground other than that there was no rights withheld and no injury, under the settled

and invariable principle that every right, when withheld, must have a remedy, and every injury its proper redress.

Three well established rights have been withheld from Christensen. (1) The right to be free from involuntary servitude, (2) the right to protection of the laws, and (3) the right to redress his grievances.

(1)Involuntary servitude is prohibited by both the U. S. Constitution and the Utah Constitution.

> "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." Amendment Thirteen, U. S. Constitution, (see also Article I, Sec 21, Utah Constitution)

The definition of involuntary servitude is:

> "INVOLUNTARY SERVITUDE. The condition of one who is compelled by force, coercion, or imprisonment, and against his will, to labor for another, whether he is paid or not. Blacks Law Dictionary. (emphasis added)

Defendants caused Christensen to be imprisoned to compel him to do the labor of making state income tax returns, which was against his will because such returns were

not required by law.

(2) The right to protection of the laws is well established. This court ruled:

> "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws whenever he receives an injury. One of the first duties of government is to afford that protection." Marbury v. Madison, supra, at page 163. (emphasis added)

The failure of the Defendants to afford Christensen protection of the above constitutional provisions, which are laws, as well as protection of state statutes is in conflict with the above ruling in Marbury v. Madison, The decision of the Utah Court of Appeals rejecting Christensen's claim of being denied protection of the laws is also in conflict with this Court's decision in Marbury v. Madison.

The issue of whether the law requires individuals of Utah to make and file Utah income tax returns has been in five courts and before nineteen judges and justices. All have refused to accept the law as it reads and apply it to the case. The refusal of the Judges and Justices to accept the law as it

reads and apply it to this case as it reads is in conflict with this Court's decision in Solesbee v. Balkcom.

> "It is now the settled doctrine of this Court that ... due process is that which comports with the deepest notions of what is fair and right and just." Solesbee v. Balkcom, 339 U.S. 9 (1950)

It is certainly not fair nor right nor just, considering this Court's ruling that every individual has the right to claim the protection of the laws, and that it is the duty of government to afford that protection, to deny Christensen protection of the laws as they read. Thus, the ruling of the Utah Court of Appeals rejecting Christensen's claim of being denied protection of the laws is in conflict with this Court's decision in Solesbee v. Balkcom, and is not due process.

THE LAW EXPLAINED AGAIN

Utah Code Ann. Sec. 59-31-7(1) provides: "If a taxpayer fails to file any return required pursuant to Title 59 within 60 days of the time prescribed, the state tax commission may petition for a writ of mandate to compel the taxpayer to file the return."

(emphasis added)(see ..-24, Appendix page 24)

The competent mind, reading said section, would conclude that the state tax commission may petition for a writ of mandate only if a taxpayer fails to file any return required pursuant to Title 59. Christensen argued that he was not required by Utah Code, Title 59 to file Utah income tax returns.

Utah Code Ann. Sec. 59-14A-48 provides: "Persons required to file returns.-An income tax return with respect to the tax imposed by this act shall be filed by: (a) Every resident individual, estate or trust required to file a federal income tax return for the taxable year." (emphasis added, see A-25)

The competent mind, reading said section, with respect to Christensen, would conclude that he would be required to file Utah income tax returns only if he was required to file a federal income tax return for the taxable year. No such proof was shown.

Utah Code Ann. Sec. 59-24-4 provides: "In proceedings of the tax division of any district court and on appeal therefrom, a

preponderence of the evidence shall suffice to sustain the burden of proof. The burden of proof shall fall upon the parties seeking affirmative relief ..."

The competent mind, reading said section, would conclude that the Utah State Tax Commission had the burden of proving that Christensen was required to file Utah income tax returns in order to obtain a writ of mandate to compel him to file such returns.

At the "trial" on May 18, 1987 Christensen questioned Mericia Fryer, Utah State Tax Commission witness as follows; Her answers were recorded in the transcript:

> Q. Am I required to file a federal income tax return for any of the years that you've suggested ?
>
> A. In my opinion, yes, you are.
>
> Q. Do you know the law? This is only your opinion ?
>
> A. My opinion is based upon the IRS Code, and on Utah Code Annotated 59-14A.
>
> Q. Will you state the section of the Internal Revenue Code that requires me.?
>
> A. I do not know the specific section of the Internal Revenue Code.
>
> (Transcript, page 18)

At that point in the "trial", the competent mind would conclude that the state tax commission had failed to carry its burden of proof to support its petition for a writ of mandate.

It is alleged that at that same point the Utah district Court became a kangaroo court, ruling according to how the judge wanted the case to turn out rather than affording Christensen protection of the laws as they read. All courts, in the original case and in this case have followed kangaroo court practices. Also at that same point the other Defendants abandoned their duty to afford Christensen protection of the laws, as well as entered a conspiracy against his right to said protection, as stated in Marbury, supra.

Kangaroo court proceedings are in confict with this Court's decision in In Re. Murchison.

> "A fair trial in a fair tribunal is a basic requirement of due process." In Re Murchison, et al., 349 U.S. 133, 136.

It is certainly not a fair trial where the law is disregarded in order to obtain a

desired outcome in a case or to coverup wrongdoing by public employees.

Christensen entered his analysis of 26 U.S.C., Sec. 6012 into evidence, which is a preponderence of evidence that he was not required to file federal income tax returns for the years in question. (see A-26) A competent mind reading the words "except that a return shall not be required of an individual (other than an individual referred to in subparagraph (C)- would conclude that an individual must be referred to in subparagraph (C) in order to be required to make returns. Christensen is not. (see A-15 for Hanson's ruling from the bench, May 18, 1987)

The competent mind would test every law for constitutionality before assuming that it was valid law. Each of the lower Courts' failure to do so is in conflict with this Court's decision in several cases.

> "It is not every act, legislative in form, that is law. Law is something more than mere will exerted as an act of power. ... Arbitrary power, enforcing its edicts to the injury of the persons and property of its subjects, is not law." Hurtado v. Cal-

ifornia, 110 U.S. 516, 535-536.

> It is also not entirely unworthy of observation, that in declaring what shall be the supreme law of the land, the constitution itself is first mentioned; and not the laws of the United States generally, but those only which shall be made in pursuance of the constitution, have that rank.
>
> Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void; and that courts, as well as other departments, are bound by that instrument. Marbury v. Madison, supra.

The competent mind would conclude that a law requiring individuals to file their private financial information with public employees would not be pursuant to a provision of the Constitution, but would be repugnant to both the Fourth and Thirteenth Amendments. Such a law would be in conflict with this Court's decision in Warden V. Hayden.

> "We have recognized that the principle object of the Fourth Amendment is the protection of privacy ..." Warden v. Hayden, 387 U.S. 294, 304.

Certainly privacy would not be protected if there was a law requiring individuals to report their private financial information to government employees.

Further, the definition of involuntary servitude, supra, shows that forced labor which is against the will is involuntary servitude. Since there is labor involved in keeping records and making and filing income tax returns, and since such labor is prohibited by Amendment Thirteen, there could not be a law requiring such labor without being in conflict with the Amendment, and this Court's decisions in support of the definition. i.e. Ex parte Wilson, 114 U.S. 417; In re Slaughterhouse Cases, 16 Wall 69; and Robertson v. Baldwin, 165 U.S. 275.

The Utah Court of Appeals decision (the state has the authority to impose on its citizens certain duties, including the filing of income tax returns) is in conflict with the above decisions of this Court and also in conflict with Miranda v. Arizona.

> "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them. Miranda v. Arizona, 384 U.S. 436

The right to privacy as well as the right to be free from involuntary servitude would

be abrogated by a law requiring individuals to do the labor of keeping records and making and filing their private financial information with public employees.

The definition of constitutional shows that such a law would not be constitutional because of its conflict with constitutional provisions securing the right to privacy and the right to be free from involuntary servitude.

> "CONSTITUTIONAL. Consistent with the constitution; authorized by the constitution; not conflicting with any provision of the constitution or fundamental law of the state." Blacks Law Dictionary.

A law requiring individuals to make and file income tax returns would not be consistent with the constitution, is not authorized by the constitution, and would be in conflict with provisions of both the Fourth and Thirteenth Amendments, as shown above.

Utah Constitution Article 1, Sec. 10 provides for trial by jury in civil cases, when demanded.(see A-29) Jury trial was demanded and denied in the original case, and demanded and avoided by dismissal in this case. Thus,

Christensen was denied protection of said provision of Utah fundamental law. The Utah Court of Appeals decision rejecting Christensen's claim of being denied protection of the laws is in conflict with this Court's decision in Marbury v. Madison, supra, as well as Amendment Fourteen of the U. S. constitution which prohibits states from denying equal protection of the laws. (see A-29)

Article I, Sec. 11 of the Utah Constitution provides that every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law. (see A-29) Dismissal of Christensen's suit denied him remedy for his injuries as well as protection of said provision of the fundamental law. The Utah Court of Appeals decision affirming the dismissal denied Christensen protection of said fundamental law and is in conflict with this Court's decision in Marbury v. Madison, supra.

Article VII, Sec. 5 of the Utah Constitution provides that the Governor shall see that the laws are faithfully executed. (see

A-30) The failure of the Governor, and other executive department employees, to see that the Utah Laws and Utah Constitution was faithfully executed caused Christensen to be denied protection of the laws. The Utah Court of Appeals decision rejecting Christensen's claim that he was denied protection of the laws is in conflict with this Court's decision in Marbury v. Madison, supra.

Utah Constitution, Article I, Sec. 26 provides that the provisions of the Utah Constitution are mandatory. Failure of Defendants to provide a jury trial and to see that the laws are faithfully executed denied Christensen protection of Article I, Sec. 26 of said fundamental law. The decision of the Utah Court of Appeals rejecting Christensen's claim of being denied protection of the laws is in conflict with this Court's decision in Marbury v. Madison, supra.

Utah Constitution, Article IV, Sec. 10 provides that officers of Utah Government shall take an oath of office and agree to obey both the U. S. and Utah Constitutions.

(see A-30). Failure of the Defendants to obey the provisions of either constitution, with respect to jury trial, seeing that the laws are faithfully executed, disregarding the prohibition against involuntary servitude, disregarding the right to petition for redress and that every person must have a remedy for injuries, etc. denied Christensen protection of said Article IV, Sec. 10.

Defendants claim of immunity from suit, and the Utah Court of Appeals decision supporting such claim is in conflict with several decisions of this Court as follows:

> "If one of the heads of departments commits any illegal act, under color of his office, by which an individual sustains an injury, it cannot be pretended that his office alone exempts him from being sued in the ordinary mode of proceedings, and being compelled to obey the judgment of the law. How, then, can his office exempt him from this particular mode of deciding on the legality of his conduct, if the case be such a case as would, were any other individual the party complained of, authorize the process?" Marbury v. Madison, supra, at p. 170.

> "Decency, security, and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen." Olmstead v. United States, 277 U.S. 438, 485.

Said decisions recognize the principle of equality established in the Declaration of Independence that "all men are created equal" This court again ruled:

> "The Court of Appeals was correct in holding that absolute immunity does not shield official functions from state-law tort liability unless challenged conduct is within the outer perimiter of an official's duties and is discretionary in nature." Westfall v. Erwin, 56 LW 4087 (1988)

In the instant case Defendants had a duty to afford Christensen protection of the laws and had absolutely no discretion to do otherwise.

Further, the theory of immunity from suit is in conflict with both the Utah Constitution and this Court's ruling in Marbury v. Madison, that every injury must have its proper remedy. The competent mind would conclude that immunity from suit could not exist at the same time that every injury must have its proper remedy.

16 Am Jur 2d, Sec. 178 provides; "If any person acts under an unconstitutional statute, he does so at his own peril and must take the consequences." The words take the consequences

clearly indicates that there can be no immunity from suit. (see A-31)

16 Am Jur 2d, Sec 256 provides that an unconstitutional statute affords no protection. (see A-31) Even if Defendants had followed a state statute they would not have been afforded the protection of immunity from suit, because of unconstitutionality.

Under Rule 17.1 (c), Rules of this Court, consideration for review includes "When a state court ... has decided an important question of federal law which has not been, but should be, settled by this Court ..." The Utah Court of Appeals ruling ("the state has the authority to impose on its citizens certain duties, including the filing of income tax returns.") is an important question of federal law which has not been, but should be, settled by this Court.

It would appear that both federal and state employees may believe that the power to tax also means the power to require individuals to file returns, even to the point of waiving their rights to privacy and immunity

from involuntary servitude. It is contended that the two are as different as day and night, and that the requirement to file returns would be repugnant to the Constitution, as argued above.

IMPORTANCE OF ISSUING WRIT

When state employees, under oath to obey both the U. S. and State Constitutions, fail to study state and federal law, before applying for a writ of mandate which was contrary to law, fail to test their beliefs for constitutionality, reject the law when it is presented to them, fail to carry the burden of proof, issue a writ contrary to law, refuse overrule a fraudulent writ, cause a citizen of the state to be imprisoned to compel him to do the labor of making income returns, not required by law, which is the exact definition of involuntary servitude, prohibited by both Constitutions, and then claim immunity from suit, which is in direct conflict with the right of citizens to redress their injuries, such situation is so important as to justify setting aside all other

business of this Court to rule against such practices as the most flagrant violations of due process of law.

When government employees become so corrupt as to undermine long existing principles and the rights of the people, explained herein, it is time for this Court to act, lest such abuses generate civil war issues.

Sincerely submitted,

Edward Dean Christensen

CERTIFICATE OF MAILING

I hereby certify that I mailed three copies of the foregoing Petition to the Attorney General of Utah, Utah State Capitol, Salt Lake City, Utah, 84114 on December 11, 1989, and three corrected copies to the same on Jan. 8, 1990

Edward Dean Christensen

APPENDIX

APPENDIX TABLE OF CONTENTS

UTAH COURT OF APPEALS DECISION	A-1
UTAH DISTRICT COURT ORDER	A-11
SUPREME COURT OF UTAH ORDER	A-12
ORDER DENYING SUMMARY DISPOSITION	A-13
ORDER DENYING REHEARING	A-14
JUDGE HANSON'S ORDER FROM BENCH	A-15
WRIT OF MANDATE	A-16
SUPREME COURT OF UTAH RULING (orig.)	A-21
ORDER DENYING REHEARINH (UT. S. CT.)	A-23
UTAH CODE SEC. 59-31-7	A-24
UTAH CODE SEC. 59-14..-48 & 59-24-4	A-25
26 U.S.C., SEC. 6012	A-26
U. S. CONST. AMENDMENTS ONE AND FOUR	A-27
U. S. CONST. AMEND'S 5, 10 & 13	A-28
U. S. CONST. AMENDMENT 14	A-29
UTAH CONST. ART. I, SECS. 7, 10 & 11	A-29
UTAH CONST. ART. I, SECS. 21 & 26	A-30
UTAH CONST. ART. IV, SEC. 10	A-30
UTAH CONST. ART. VII, SEC. 5	A-30
16 Am Jur 2d Sec. 178	A-31
16 Am Jur 2d Sec. 256	A-31

IN THE UTAH COURT OF APPEALS

----ooOoo----

Edward Dean Christensen, Plaintiff and Appellant, v. Bryce H. Pettey, Mary Beth Walz, et al., Defendants and Respondents.	MEMORANDUM DECISION (Not For Publication) Case No. 880035-CA

Before Judges Bench, Davidson and Jackson
(On Law and Motion)

PER CURIAM:

Appellant Edward Dean Christensen appeals dismissal by the district court of his pro se complaint. His claim arises out of prior litigation initiated by the Utah State Tax Commission against him. In that case the tax commission had sought mandamus under Utah Code Ann. Sec. 59-31-7 (1987) to require appellant to file individual state income tax returns for the years 1978 through 1985. Defendant District Judge Hanson granted the relief sought by the Utah State Tax Commission.

Appellant appealed to the Utah Supreme Court, claiming he could not be required by the tax commission or by the court to file state income tax returns. The supreme court summarily affirmed the judgment and mandate. After remand to the district court, and upon appellant's refusal to comply with the mandate to file his returns, he was held in contempt of the district court's order

Appellant thereafter commenced this action, generally alleging that Judge H Hanson and the Justices of the Supreme Court deprived appellant of due process and equal protection of the laws because the courts lacked jurisdiction and "misjudged" his case. Defendants Pettey, Walz, Miller and Lewis are the Assistant Utah Utah Attorneys General who represented the tax commission in that proceeding. Defendant Fryer is an employee of the tax commission who testified against appellant.

Appellant also claims that Defendant Governor Norman Bangerter was neglegent in not appointing more competent employees. Appellant seeks general and punitive damages. costs and attorney fees and an injunction against defendants, who are all state officers and employees, from further "harassing" him.

Defendants' moved to dismiss appellant's complaint because it totally failed to allege a claim upon which relief could be granted. Judge Don V. Tibbs granted the motion and dismissed the action.

Appellant appeals the dismissal. On appeal, defendants filed a motion for summary affirmance in Utah Court of Appeals under R. Utah Ct. App. 10. We denied that motion, without prejudice, because we had nothing before us by way of pleadings or the record to provide background to the motion or to issues raised on appeal. After filing pertinent

portions of the record, defendants again moved for summary disposition under Rule 10. Appellant objects that this second motion is untimely.

The filing of a motion for summary disposition is not a jurisdictional matter. Under R. Utah Ct. App. 10, such a motion by a party must be filed within ten days of appellant's docketing statement to be timely. Whether or not an untimely motion should be considered on its merits is within the sound discretion of this court. Cf. Dorge v. Utah Court of Appeals, 762 P.2d 347 (Utah 1988) (It is within the jurisdiction and discretion of the Court of Appeals to enforce its own rules.) Generally, an untimely motion for summary disposition will not be considered. However, untimeliness is not necessarilly "conclusive grounds" for denial of a motion in every instance, particularly when it is plainly apparent that no substantial question has

been presented or that manifest error was committed below. In unusual circumatances, when such a strong showing is made, this Court may consider and rule upon an intimely Rule 10 motion by either exercising its discretionary, supervisory powers over its own rules by temporary suspension of the time requirement in Rule 10(a), or on its own motion under Rule 10(e). [1]

After examination of the entire record, the memoranda of the parties, and the underlying allegations of appellant's claims against defendants, we conclude that this appeal does not any meritorious issue or question. The appellant's claims for relief in his complaint and his contentions on appeal are so frivolous and

1. Also, this Court will at any point in the appeal proceedings consider and examine its own jurisdiction or lack thereof, either by motion of the parties or upon its own motion. Thompson v. Jackson, 743 P2d 1230. 1230 (Utah App. 1987) (the initial inquiry of a court is to determine its own jurisdiction).

lacking of any legal merit as to not justify further proceedings or consideration on appeal. We grant defendants motion for summary affirmance. We agree with the order of Judge Tibbs that appellant's allegations fail to state any cognizable claim or right to relief.

Plaintiff claims that in allegidly violating his constitutional rights, each defendant acted in her or his official capacity as an officer or employee of the state. As officers and employees of the State of Utah, defendants are protected by sovereign immunity under the Utah Governmental Immunity act, Utah Code Ann. Sec. 63-30-1 to 37 (1986 and Supp. 1988). Because defendants acted solely within the scope of their official duties in the enforcement of our tax laws and the collection of taxes, we agree that they are i immune from suit under Utah Code Ann. Secs. 63-30-4(4) and 63-30-10(1). See Madsen v.

Brothick, 658 P.2d 617, 632-3 (Utah 1983). We reject the argument that because def defendants allegegedly "abandoned" their official duties by requiring appellant to comply with our state tax laws they are not entitled to the protection of sovereign immunity. The argument is merely unreasonable and unjustified conclusion appellant draws without any factual support.

The record does support the conclusion that appellant did not comply with the written notice provisions of Utah Code Ann. Sec.63-30-11(2). And, we reject ap appellant's notion that the principle of sovereign immunity infringes upon the "open courts" provision of the Utah Constitution, Article 1, Sec. 11. Id. at 629.

Finally, appellant attempts to avoid sovereign immunity by demanding injunctive relief to prevent future alleged "harass-

ment," through enforcement of the prior judgment. In effect, appellant attempts to secure a reversal of the tax proceeding judgment and the Utah Supreme Court's affirmance. We agree with defendants that such a device as injunctive relief may not be involked to obtain review and reversal of an earlier decision. Navajo Nation v. District Court of Utah County, 624 F. Supp. 130 (D. Utah 1985); Lewis v. Green, 629 F. Supp. 654 (D.D.C. 1986)

Having had the opportunity to argu his defenses to the trial and appellate courts in the prior proceeding with the tax commission, appellant may not circumvent the finality of that matter by his collateral accusations here. Although every citizen is shealed by the constitutional protections and the laws thereunder, the power to interpret and apply those protections and laws, and to say what the law is, is a matter solely within the province and duty

of the judiciary. Marbury v. Madison, 5 U.S. (1 Cranch) 135, 177-78 (1803). A person may not invole constitutional and statutory rights and protections while at the same time refusing to respond to their attendant obligations.

> In order for our scheme of ordered liberties to suceed, we must all obey valid laws; a man cannot exempt himself from the operation of a law simply by declaring that he does not consent to have it apply to him.

City of Salina v. Wisden, 737 P.2d 981, 982 (Utah 1987). See also State Tax Comm'n v. Looney, 696 P.2d 1206, 1207 (Utah 1985) ("the state has authority to impose on its citizens certain duties, including the filing of income tax returns."). A detailed discussion of each of appellant's various other constitutional arguments is unnecessary. However, we examined and r reject each of these arguments, including the claims that appellant has been denied due process and equal protection of the

laws.

We grant defendants' motion for summary affirmance. The district court's order of dismissal is summarily affirmed.

ALL CONCUR:

/s/
Russell W. Bench, Judge

/s/
Richard C. Davidson, Judge

/s/
Norman H. Jackson, Judge

IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR COUNTY OF SEVIER

STATE OF UTAH

EDWARD DEAN CHRISTENSEN,

Plaintiff,

-vs- ORDER

BRYCE H. PETTEY, MARY BETH WALZ, et al, CIVIL NO. 10111

Defendants.

This matter came before the Court on the 12th day of November, 1987.

The Court finds: That the Complaint fails to state a claim upon which relief can be granted.

NOW, THEREFORE IT IS ORDERED AS FOLLOWS: The Complaint as to all the Defendants is Dismissed with Prejudice.

Dated this 12th day of November, 1987.

/s/
DON V. TIBBS
DISTRICT JUDGE

SUPREME COURT OF UTAH

STATE OF UTAH

SALT LAKE CITY, UTAH

January 15, 1988

OFFICE OF THE CLERK

Edward Dean Christensen,
387 North 300 East
Richfield, Utah 84701

Edward Dean Christensen,
Plaintiff and Appellant,

v. No. 870457

Bruce H. Pettey, Lary Beth
Walz, et al.,
Defendants and Respondents.

Pursuant to the the authority vested in this Court, this case is poured-over to the Court of Appeals for dis osition. All further pleadings and corrispondence should be directed to that court. Their address is 230 South 500 East, suit 400, Salt Lake City, Utah 84102.

Geoffrey J. Butler, Clerk

IN THE UTAH COURT OF APPEALS

----ooOoo----

Edward Dean Christensen, Plaintiff and Appellant, v. Bryce H. Pettey, et al., Defendants and respondents.	ORDER DENYING MOTIONS FOR SUMMARY DISPOSITION Case No. 880035-CA

Plaintiff's motion for summary reversal is denied.

Respondents' failure to provide pertinent portions of the record in the trial court also requires that their motion for summary affirmance be and is hereby denied.

Dated this 22nd day of February, 1988.

FOR THE COURT

/s/
Regnal W. Garff, Judge

The MEMORANDUM DECISION of the Utah Court of Appeals, dated Aug. 25, 1989 is at page A-1 of this appendix.

IN THE UTAH COURT OF APPEALS

----ooOoo----

Edward Dean Christensen, Plaintiff and Appellant v. Bryce H. Pettey, Mary Beth Walz, Maxwell A. Miller, Steven W. Lewis, Timothy R. Hanson, Mericia L. Fryer, Gordon Hall, Christine Durham, Michael Zimmerman, Richard C. Howe, L. Daniel Stewart, Norman H. Bangerter, John and Jane Does' 1 through 100, Defendants and Respondents.	ORDER DENYING REHEARING Case No. 880035-CA

Before Judges Bench, Davidson and Jackson

(On Law and Motion)

Appellant's petition for rehearing is denied.

DATED this 15th day of September, 1989.

FOR THE COURT:

/s/
Russell W. Bench, Judge

Rule 21(k)(iv) other materials follow.

Court decisions in the original proceeding show injuries claimed.

UTAH STATE TAX COMMISSION, Petitioner	
	Civil No. T87-3
v.	
EDWARD DEAN CHRISTENSEN, Respondent.	Judge Timothy R. Hanson

TRANSCRIPT OF PROCEEDINGS, May 18, 1987

THE COURT: The Court finds in this matter that Mr, Christensen is a person who is required to file a tax return in the State of Utah. Mr. Christensen, I specifically find that you are a person that is required to file a Federal Income Tax Return. And whether or not the Federal Government chooses to enforce that is of course their business, and not mine. But in my opinion you are required to file a Federal Income Tax Return, and consequently you're required to file a State Tax Return. Accordingly, a writ of mandate will issue.

(at pages 38 and 39)

Bunny C. Neuenschwander
Court Reporter

IN THE TAX COURT DIVISION OF THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY STATE OF UTAH

UTAH STATE TAX COMMISSION, Petitioner, v. EDWARD DEAN CHRISTENSEN, Respondent.	WRIT OF MANDATE AND JUDGMENT Civil No. T87-3 Judge Timothy R. Hanson

Petitioner's Verified Petition for Writ of Mandate, came on for hearing before this Court on the 18th day of May, 1987.

The Petitioner was represented by Steven W. Lewis, Assistant Attorney General, and the respondent appeared Pro se. Witnesses on behalf of petitioner were Mericia Fryer, Compliance Auditor, Utah State Tax Commission; and Nancy B. Sharkey, Director of Benefits Administration, CIGNA Corporation, whose sworn affidavit was offered as evidence pursuant to Utah Rules of Evidence, Rule 803(24). Respondent refused to take

the witness stand to be sworn and questioned.

The Court having considered the petitioner's written petition, affidavit, and statutory references together with oral testimoney, exhibits, and argument of the parties, now makes the following findings and conclusions:

FINDINGS OF FACT

1. This court does have jurisdiction over the respondent for petitioner's cause of action pursuant to Article VIII, Sections 11 and 12, of the Utah Constitution and pursuant to Utah Code ann. Sec. 59-24-1, et seq., (1953, as amended).

2. Respondent was an "individual" and a "resident individual" during 1978 through 1985 within the meaning of Utah Code Ann. Sec. 59-14A-4(b) and (g) and within the meaning of the filing requirements of Sec. 59-14A-48(a).

3. Respondent received sufficient income

during 1978, 1979, 1980, 1981, 1982, 1983, 1984, and 1985 to be required to file Utah Individual Income Tax Returns for those taxable years.

4. Respondent earned and /or received sufficient income during the above-mentioned taxable years to be required to file federal income tax returns for those taxable years.

5. Petitioner is entitled to the entry of its Writ of Mandate and Judgment based upon the evidence before this court.

Being fully advised in the premises and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. This court has jurisdiction to consider and grant petitioner's Verified Petition for Writ of Mandate.

2. A Writ of Mandate and Judgment shall issue, and this Writ of Mandate is hereby issued against the respondent, Edward Dean

Christensen, in the following particulars:

a. Respondent, Edward Dean Christensen, is ordered to file a true, accurate, and complete 1978, 1979, 1980, 1981, 1982, 1983, 1984, and 1985 Utah Individual Income Tax Returns, form TC-40 series, with petitioner on or before the 6th day of July 1987, at 5:00 p.m.

b. Each complete Utah Individual Income Tax Return must include a complete copy of the corresponding federal income tax return (s) and any applicable W-2P forms and it shall contain information from which the correctness of reported tax liability can be determined.

c. All returns must be filed with Mericia L. Fryer, Compliance Auditor, Utah State Tax Commission, 6th Floor, Heber M Wells Building, 160 East 300 South, Salt Lake City, Utah 84134.

3. Failure to comply with this Writ of Mandate and Judgment will be considered

contempt of this Court's Order.

4. An award as provided for in Utah Code Ann. Sec. 59-31-7(1) is granted against respondent in the following particulars:

a) Attorney's Fees $470.00

b) Mailing Costs 14.00

TOTAL 484.00

5. Payment of awarded fees and costs must be made to the office of the Utah Attorney General, 130 State Capitol, Salt Lake City, Utah 84114 Attention: Steven W. Lewis, on or before the 6th day of July, 1987, at 5:00 p.m.

6. Service of this Writ of Mandate and Judgment may be had by mail.

DATED this 22 day of May, 1987.

/s/

HONORABLE TIMOTHY R. HANSON
Tax Court Division Judge
Third District Court

ATTEST
H. DIXON HINDLEY
By /s/ Evelyn Thompson
Deputy Clerk

SUPREME COURT OF UTAH

STATE OF UTAH

SALT LAKE CITY, UTAH

August 28, 1987

OFFICE OF THE CLERK

Edward Dean Christensen
387 North 300 East
Richfield, Ut 84701

Utah State Tax Commission,
Plaintiff and Respondent,

v. No. 870220

Edward Dean Christensen,
Defendant and Appellant.

Appellant's motion to reverse the district court order is hereby denied.

The Tax Commission's motion to affirm the order is hereby granted, on the ground that the issues raised are so unsubstantial as not to merit further proceedings or consideration by this court, and some issues raised are entirely frivolous. See State Tax Commission v. Looney, 696 P.2d 1206 (Utah 1985); United

State v. Ware, 608 F.2d 400 (10th Circut 1979); and Christensen v. Commissioner of Internal Revenue Service, 45 TCM 160 (1982).

Appellant's motion for stay of execution is denied, and the judgment is affirmed.

Geoffrey J. Butler, Clerk

SUPREME COURT OF UTAH

STATE OF UTAH

SALT LAKE CITY, UTAH

November 20, 1987

OFFICE OF THE CLERK

Edward Dean Christensen
387 North 300 East
Richfield, UT 84701

Utah State Tax Commission,
Plaintiff and Respondent,

v. No. 870220

Edward Dean Christensen,

Defendant and Appellant.

Upon consideration of the motion for rehearing heretofore filed herein, it is ordered that the rehearing be, and the same is, denied.

Geoffrey J. Butler, Clerk

UTAH CODE ANN.

59-31-7. Writ of mandate requiring taxpayer to file return.

(1) If a taxpayer fails to file any return required pursuant to Title 59 within 60 days of the time prescribed, the state tax commission may petition for a writ of mandate to compel the taxpayer to file the return, The petition may be filed, in the discretion of the tax commission, in the tax court of the third judicial district or in the district court for the county in which the taxpayer resides or has his principal place of business. In the case of a nonresident taxpayer the petition shall be filed in the third district court.

The court shall grant a hearing on the petition for a writ of mandate within 20 days after the filing of the petition or as soon thereafter as the court may determine, having regard for the rights of the parties and the necessity of a speedy determination of the petition.

Upon finding of failure to file a return within 60 days of the time prescribed pursuant to Title 59, the court shall issue a writ of mandate requiring the taxpayer to file a return. The order of the court shall include an award of attorneys' fees, court costs, witness fees and all other costs in favor of the prevailing party.

(2) Nothing in this section shall limit the remedies otherwise available to the state tax commission under Title 59 or other laws of this state.

History: C. 1953, 59-31-7, enacted by L. 1983, ch. 292, Sec. 1.

Extraordinary and statutory writs distinguished.

The extraordinary writ of mandamus, which is normally used only to compel a public officer to perform a duty, should not be confused with the statutory writ of mandate, wnich carries no such limitation under this statute. State Tax Comm'n v. Looney (Utah 1985) 696 P.2d 1206.

UTAH CODE ANN.

59-14A-48. Persons required to file returns.-An income tax return with respect to the tax imposed by this act shall be filed by:

(a) Every resident individual, estate or trust required to file a federal income tax return for the taxable year.

(b) Every nonresident individual, estate or trust having federal gross income derived from sources within the state for the taxable year and required to file a federal income tax return for such taxable year.

UTAH CODE ANN, 1986 Supplement

59-24-4. Burden of proof-Decision of court.

In proceedings of the tax division of any district court and on appeal therefrom, a preponderence of the evidence shall suffice to sustain the burden of proof. The burden of proof shall fall upon the parties seeking affirmative relief and the burden of going forward with the evidence shall shift as in other civil litigation. The tax division of the district court shall render its decision in writing, including therein a concise statement of the facts found by the court and the conclusions of law reached by the court. The court may afirm, reverse, modify or remand any order of the state tax commission, and shall grant other relief, invoke such other remedies, and issue such orders, in accordance with its

decision, as shall be appropriate.

History: C. 1953, 59-24-4, enacted by L. 1977, ch. 80, Sec. 23.

UNITED STATES CODE, TITLE 26, (1979)

SEC. 6012. PERSONS REQUIRED TO MAKE RETURNS OF INCOME.

(a) General Rule.-Returns with respect to income taxes under subtitle A shall be made by the following:

(1)(A) Every individual having for the taxable year a gross income of $1,000 or more, except that a return shall not be required of an individual (other than an individual referred to in subparagraph (C))-

(i) who is not married (determined by applying section 143), is not a surviving spouse (as defined in section 2(a)), and for the taxable year has a gross income of less than $3,300.

(ii) who is a surviving spouse (as so defined) and for the taxable year has a gross income of less than $4,400.

(iii) who is entitled to make a joint return under section 6013 and whose gross income, when combined with the gross income of his spouse, is for the taxable year, less that $5,400, but only if such individual and his spouse, at the close of the taxable year, had the same household as their home.

Clause (iii) shall not apply if for the taxable vear such spouse makes a seperate return or any other taxpayer is entitled to an exemption for such spouse under section 151(e).

(B) The amount specified in clause (i) or (ii) of subparagraph (A) shall be increased by $1,000 in the case of an individual entitled to an additional personal exemption under section 151 (c)(1) and the amount specified in clause (iii) of subparagraph (A) shall be increased by $1,000

for each personal exemption to which the individual or his spouse is entitled under section 151(c).

(C) The exception under subparagraph (A) shall not apply to-

(i) a nonresident individual;

(ii) a citizen of the United States entitled to the benefits of section 931;

(iii) an individual making a return under section 443(a)(1) for a period of less than 12 months on account of a change in his annual accounting period;

(iv) an individual who has income (other than earned income) of $1,000 or more and who is described in section 63(e)(1)(D);or

(v) an estate or trust.

UNITED STATES CONSTITUTUON

AMENDMENT ONE

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT FOUR

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

UNITED STATES CONSTITUTION

AMENDMENT FIVE

No person shall be held to answer for a capital, or other infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia. when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

AMENDMENT TEN

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

AMENDMENT THIRTEEN

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

UNITED STATES CONSTITUTION

AMENDMENT FOURTEEN, SECTION ONE.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privilages or immunities of citizens of the United States; nor shall any State deprive any person or life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

UTAH CONSTITUTION

ARTICLE I, SEC. 7

No person shall be deprived of life, liberty or property, without due process of law.

ARTICLE I, SEC. 10

In capital cases the right of trial by jury shall remain inviolate. In courts of general jurisdiction, except in capital cases, a jury shall consist of eight jurors. In courts of inferior jurisdiction a jury shall consist of four jurors. In criminal cases the verdict shall be unanimous. In civil cases three-fourths of the jurors may find a verdict. A jury in civil cases shall be waived unless demanded.

ARTICLE I, SEC. 11

All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and

no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

ARTICLE I, SEC. 21.

Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within this State.

ARTICLE I, SEC 26.

The provisions of this Constitution are mandatory and prohibatory, unless by express words they are declared to be otherwise.

ARTICLE IV, SEC. 10

All officers made elective or appointive by this Constitution or by the laws made in pursuance thereof, before entering upon the duties of their respective offices, shall take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of this State, and that I will discharge the duties of my office with fidelity."

ARTICLE VII, SEC. 5

The executive power of the State shall be vested in the Governor, who shall see that the laws are faithfully executed. The Governor shall transact all executive business with the officers of the government, civil and military, and may require information in writing from the officers of the Executive Department, and from the officers and managers of State Institutions, upon any subject relating to the condition, management, and expenses of their respect-

ive offices and institutions, and at any time when the Legislature is not in session, may, if deemed necessary, appoint a committee to investigate and report to the Governor upon the condition of any executive office or State institution. The Governor shall communicate by message the condition of the State to the Legislature at every regular session, and recomend such measures as may be deemed expedient.

CONSTITUTIONAL LAW

16 Am Jur 2d, Sec. 178. Par. 2

The general rule is that an unconstitutional act of the legislature protects no one. It is said that all persons are presumed to know the law, meaning that ignorance of the law excuses no one; if any person acts under an unconstitutional statute, he does so at his own peril and must take the consequences.

16 Am Jur 2d, Sec. 256

The general rule is that an unconstitutional statute, whether federal or state, though having the form and name of law, is in reality no law. but is wholly void, and ineffective for any purpose, since unconstitutionality dates from the time of its enactment, and not merely from the date of the decision so branding it, an unconstitutional law, in legal contemplation, is as inoperative as if it had never been passed. Such a statute leaves the question that it purports to settle just as it would be had the statute not been enacted. No repeal of such an enactment is necessary.

Since an unconstitutional statute is void, the general principles follow that it imposes no duties, confers no rights, creates no office, bestows no power or authority on anyone, affords no protection, and justifies no act performed under it. A contract which rests on an unconstitutional statute creates

no obligation to be impared by subsequent legislation.

No one is bound to obey an unconstitutional law and no courts are bound to enforce it. Persons convicted and fined under a statute subsequently held unconstitutional may recover the fines paid.

A void act cannot be legally inconsitent with a valid one. And an unconstitutional law cannot operate to supersede any existing valid law. Indeed, insofar as a statute runs counter to the fundamental law of the land, it is superseded thereby. Since an unconstitutional statute cannot repeal or in any way affect an existing one, if a repealing statute is unconstitutional the statute which it attempts to repeal remains in full force and effect. And where a clause repealing a prior law is inserted in an act, which act is unconstitutional and void, the provision for the repeal of the prior law will usually fall with it and will not be permitted to operate as repealing such prior law.

The general principles stated above apply to constitutions as well as to the laws of the several states insofar as they are repugnant to the Constitution and laws of the United States. Moreover, a construction of a statute which brings it in conflict with a constitution will nullify it as effectively as if it had, in express terms, been enacted in conflict therewith.